

BOARD OF ZONING APPEALS
Minutes
June 25, 2002

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas, was held at 1:30 p.m., on June 25, 2002, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following Board members were in attendance: BICKLEY FOSTER, FLOYD PITTS, JAMES SKELTON, AND JOHN ROGERS. The following Board members were absent: RANDY PHILLIPS, absence due to conflict of interest with Agenda Item #2, AND JAMES RUANE.

SHARON DICKGRAFE, Law Department present
J. R. COX, Commercial Plan Review/Commercial Zoning -- Office of Central Inspection.

The following Planning Department staff members were present:
DALE MILLER Secretary,
SCOTT KNEBEL Assistant Secretary,
ROSE SIMMERING, Recording Secretary.

SKELTON: Calls BZA meeting to order. This is my first go at Chair, so if staff needs to knock me in the head to get things correct, please do so and don't waste anytime.

SIMMERING: Completes role call.

SKELTON: Item #1 on the Agenda, is approval of the BZA meeting minutes for April 23, 2002.

**ROGERS moved PITTS seconded to approve the "Minutes" of
April 23, 2002.**

MOTION carried 4-0.

SKELTON: Proceeding on to Item #2, BZA2002-00033.

KNEBEL, Planning staff: Presents staff report and slides. Staff recommends approval, subject to conditions, in the following report:

SECRETARY'S REPORT

CASE NUMBER: BZA2002-00033
OWNER/APPLICANT: Wichita Public Schools c/o Joe Hoover
AGENT: n/a
REQUEST: Variance to reduce the front building setback from 25' to 13'9" for Metro Meridian High School.
CURRENT ZONING: "TF-3" Two-Family Residential, "MF-29" Multi-Family Residential, and "LC" Limited Commercial
LOCATION: Southwest corner of Maple and Meridian (301 S. Meridian)
JURISDICTION: The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

BACKGROUND: The applicant is requesting a variance to reduce the front building setback along the west property line from 25' to 13'9" for Metro Meridian High School. The subject property is located at the southwest corner of Maple and Meridian (301 S. Meridian) and is zoned "TF-3" Two-Family Residential, "MF-29" Multi-Family Residential, and "LC" Limited Commercial. The zoning regulations require a 25' front building setback in the "TF-3" Two-Family Residential and "MF-29" Multi-Family Residential zoning districts, the zoning of the portion of the subject property where the building is located. A reduction of the front building setback by greater than 20% requires a variance. The zoning regulations also allow "setback averaging" whereby a building can be set back a distance equal to the average front building setback of the five existing structures on either side of the property within the block on the same side of the street. In the case of the subject property, setback averaging would allow a 17.2' front building setback.

The existing structure on the subject property currently provides only a 13'9" front building setback. The existing structure was built in 1925. In 1925, the subject property was located within the "A" Height and Area District, which permitted a front building setback equal to the front building setback of 80% of structures within the block on the same side of the street. In 1925, two structures existed within the block on the east side of the street, and both structures had a 13' front building setback. Therefore, the school was permitted a 13' front building setback at the time it was constructed. One other structure was constructed on the east side of the street within the block with a 13' front building setback. The remainder of the structures on the east side of the street within the block are constructed to a 20' front building setback, the minimum required by the zoning regulations at the time they were constructed shortly after World War II. Most of the post-World War II structures are constructed with open, unenclosed porches, which are allowed to project in to the front setback by up to 8'. Therefore, the school building is consistent with the front setback of most of the houses to the south on the east side of Richmond.

The applicant proposes to expand the existing structure to the north at a front building setback of 16', as shown on the attached site plan. Since the proposed addition requires a Variance, the applicant decided to request a Variance that provides for the 13'9" front building setback of the existing structure. The applicant's justification (see attached) indicates that the school will be expanded to add a multi-purpose room, kitchen, and restroom. The applicant also indicates that constructing the addition with a 16' front building setback will enhance the appearance of the completed building by aligning the addition with the existing structure and preventing the addition from encroaching significantly beyond the existing structure along the east wall line. From discussing the internal design of the building with the applicant, having the addition conform to the 25' front building setback would cause the internal hallway connecting the addition to the existing structure to jog to the east and then back north.

ADJACENT ZONING AND LAND USE:

NORTH	"TF-3" & "LC"	Single-family, vehicle repair
SOUTH	"TF-3"	Single-family
EAST	"B" & "LC"	Apartments, retail
WEST	"MF-29" & "TF-3"	Single-family

UNIQUENESS: It is the opinion of staff that this property is unique inasmuch as the property is located in area where the existing structure was constructed under zoning regulations that required approximately one-half the front building setback currently required. Over the years the zoning regulations have changed to require a 25' front building setback for the subject property; however, none of the structures in this area provide a 25' front building setback.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested would not adversely affect the rights of adjacent property owners, inasmuch as the addition to the structure would be internal to the subject property. No additional encroachment would occur along the west boundary of the subject property that is in excess of the placement of the existing structure. The addition to the structure would abut Richmond, and sufficient building setback will remain to allow for landscaping, fire protection, separation, light and air circulation, and pedestrian access.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the Zoning Code constitutes an unnecessary hardship upon the applicant, inasmuch as any logical addition to the structure would require building into the existing zoning setback. Additionally, the 25' front building setback is a change to the zoning regulations since the structure being expanded was constructed.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as there will be no encroachments into public utility easements or street right-of-way as a result of this reduction of the front building setback and therefore there will be no effect on the general public.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as the reduced setback will continue to provide for fire protection, separation, light and air circulation, and pedestrian access. Additionally, the setback averaging provisions of the zoning regulations would allow a 17.2' setback for the addition, and the applicant is requesting only a 1.2' lesser front building setback than would otherwise be permitted.

RECOMMENDATION: Should the Board determine that conditions necessary grant the variance exist, then it is the recommendation of the Secretary that the variance to reduce the front building setback along the west property line from 25' to 13'9" feet be GRANTED, subject to the following conditions:

1. The site shall be developed and required to comply with all building, zoning, and landscape code requirements, except that the front building setback shall be reduced from 25' to 13' 9" along the west property line. This setback reduction shall apply only to the improvements shown on the site plan approved by the Board of Zoning Appeals. The addition shall be constructed in general conformance with said site plan.
2. The applicant shall obtain all local permits necessary to construct the indicated improvements, and all improvements shall be completed within one year following the BZA approval of the variance unless such time period is extended by the BZA.
3. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

FOSTER: On the drawing that the school district turned in it talks about parking requirements of 60 spaces required and 51 provided can you address that issue?

KNEBEL: Actually they used this site plan for dual purposes. They are actually also reducing the parking requirement. The Zoning Code provides the ability to reduce parking requirements for remodeling projects by 25% with a zoning adjustment approved by the Planning Director and the Zoning Administrator, and they used this site plan for that purpose and that request was approved.

FOSTER: Could we see the zoning map again please? They are in the entire area that is black and part of it is commercial. Isn't that something that would have been cleaned up in the past. Wouldn't an opportunity have been presented to do that and remove that?

KNEBEL: That zoning occurred in 1958, I believe, or maybe even before 1958 because that was when they did stuff in the three-mile ring.

FOSTER: I think it was what I called the measles plan. It had all of these red dots all over it, so I think we called it the measles plan.

KNEBEL: This may have even been a precursor to the plan in 1958, where they adopted zoning within three miles of Wichita, because this would have been in the City limits at that point. I think this may have been done in the 1930's or so.

FOSTER: I would just think that if there is an opportunity when you do rezone in a total sense that those things can be cleaned up and not left as commercial.

KNEBEL: There is a lot of properties out there that are in circumstances like that. We could spend our time on it, but I am not sure that we are going to be allowed to.

FOSTER: People use that to build upon on other sites then nearby, and yet they are really not used. But, that is not the issue here.

SKELTON: Any other questions for Scott. Is the applicant here?

USD 259, %Joe Hoover, 3850 N. Hydraulic, Wichita, KS 67219: I don't really have anything to add to Scott's presentation, but I will answer any questions if the Board has any.

SKELTON: Any questions for Mr. Hoover? Thank you very much. Seeing nobody else in attendance to speak for or against the variance, I will limit the rest of the discussion to the Board.

ROGERS: Do we need to make a comment for the minutes that we only have four members present for this vote?

DICKGRAFE: You don't have to make a comment. It is going to take a vote of 4 to approve or disapprove.

ROGERS moves PITTS seconds that the Board accept the findings of fact as set forth in the Secretary's Report; and that all five conditions set out in section 2.12.590 (b) of the City Code as necessary for the granting of variance have been found to exist and the variance be granted subject to the conditions set out in the Secretary's Report, BZA2002-00033.

**MOTION carries 4-0, and the Board adopts the following resolution:
BZA RESOLUTION NO. 2002-00033**

WHEREAS, Wichita Public Schools, (applicant); c/o Joe Hoover (Agent), pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to reduce the front building setback from 25' to 13'9" for Metro Meridian High School on property zoned "TF-3" Two Family Residential, Multi-Family Residential, and "LC" Limited Commercial and legally described as follows:

Odd lots 447 through 469 inclusive and the north 20 feet of Lot 471 on Meridian Avenue, Martinson's 5th Addition, Wichita Sedgwick County Kansas; Even Lots 286 through 308 inclusive and the north 20 feet of Lot 210 on Phillips, now Richmond Avenue, Martinson's 5th Addition, Wichita, Sedgwick County Kansas; and the alley where vacated between said lots. Generally located at the southwest corner of Maple and Meridian.

WHEREAS, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

WHEREAS, the Board of Zoning Appeals did, at the meeting of June 25, 2002, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has found that the variance arises from such condition which is unique. It is the opinion of the Board that this property is unique inasmuch as the property is located in area where the existing structure was constructed under zoning regulations that required approximately one-half the front building setback currently required. Over the years the zoning regulations have changed to require a 25' front building setback for the subject property; however, none of the structures in this area provide a 25' front building setback.

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents. It is the opinion of the Board that the granting of the variance requested would not adversely affect the rights of adjacent property owners, inasmuch as the addition to the structure would be internal to the subject property. No additional encroachment would occur along the west boundary of the subject property that is in excess of the placement of the existing structure. The addition to the structure would abut Richmond, and sufficient building setback will remain to allow for landscaping, fire protection, separation, light and air circulation, and pedestrian access.

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of the zoning ordinance of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application. It is the opinion of the Board that the strict application of the provisions of the Zoning Code constitutes an unnecessary hardship upon the applicant, inasmuch as any logical addition to the structure would require building into the existing zoning setback. Additionally, the 25' front building setback is a change to the zoning regulations since the structure being expanded was constructed.

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. It is the opinion of the Board that the requested variance would not adversely affect the public interest, inasmuch as there will be no encroachments into public utility easements or street right-of-way as a result of this reduction of the front building setback and therefore there will be no effect on the general public.

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance. It is the opinion of the Board that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as the reduced setback will continue to provide for fire protection, separation, light and air circulation, and pedestrian access. Additionally, the setback averaging provisions of the

zoning regulations would allow a 17.2' setback for the addition, and the applicant is requesting only a 1.2' lesser front building setback than would otherwise be permitted.

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals, pursuant to Section 2.12.590.B, Code of the City of Wichita, that a variance to reduce the front building setback from 25' to 13'9" for Metro Meridian High School is hereby granted on property zoned "TF-3" Two-Family Residential, "MF-29" Multi-Family Residential, and "LC" Limited Commercial and legally described as follows:

Odd lots 447 through 469 inclusive and the north 20 feet of Lot 471 on Meridian Avenue, Martinson's 5th Addition, Wichita Sedgwick County Kansas; Even Lots 286 through 308 inclusive and the north 20 feet of Lot 210 on Phillips, now Richmond Avenue, Martinson's 5th Addition, Wichita, Sedgwick County Kansas; and the alley where vacated between said lots. Generally located at the southwest corner of Maple and Meridian.

1. The site shall be developed and required to comply with all building, zoning, and landscape code requirements, except that the front building setback shall be reduced from 25' to 13' 9" along the west property line. This setback reduction shall apply only to the improvements shown on the site plan approved by the Board of Zoning Appeals. The addition shall be constructed in general conformance with said site plan.
2. The applicant shall obtain all local permits necessary to construct the indicated improvements, and all improvements shall be completed within one year following the BZA approval of the variance unless such time period is extended by the BZA.
3. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

ADOPTED AT WICHITA, KANSAS, this 25th DAY of JUNE, 2002.

SKELTON: Next Item is report from OCI.

J.R. COX, Office of Central Inspection: BZA2001-01, BZA2001-02, and BZA2001-21, these variances are in compliance.

FOSTER: J.R., at our D.A.B. meetings for D.A.B. VI questions have been arising about these previously approved car lots that are not operating anymore. Have you noticed any trend or anything in that regard?

COX: We did have one at Harry and Rock, but it has new owners now, new operator, but I haven't really noticed that is the case but it doesn't mean that it is not though.

FOSTER: I didn't know if that was a trend or not but somebody mentioned that three of those closed down in our area, and I wondered if there was some trend in the industry or something.

COX: Not that I am aware of. Last I knew used car's is a large part of some dealer's business, a very large part.

FOSTER: We know how to handle them.

SKELTON: Any other items for today's meeting?

FOSTER: Do we have any cases for next month?

KNEBEL: We will have two cases next month.

PITTS: Does anyone have updated information on this acquisition of the sports store out on Rock Road that came before us so many times?

KNEBEL: Yes, the site that was considered by this body was at 32nd and Rock Road because that C.U.P. specifically mentioned that any sign height increases would have to be approved by a variance by the Board of Zoning Appeals. They chose not to go to that location and chose to go to 21st and Rock in the old Venture or ShopKo building, and that C.U.P. did not have that same restriction on increasing the sign height and so it was considered by Planning Commission as an amendment to the C.U.P. and they approved the same sign height that this Board approved 38'6". It was lower than their original request. I think they requested 43' and they were approved for 38'6".

Meeting adjourned informally at 1:52 p.m.